



## CITY OF LODI COUNCIL COMMUNICATION

**AGENDA TITLE:** Adopt Resolution Authorizing the City Manager to execute an Amendment to the Seattle City Light Third Phase Agreement related to Transfer of Rights by Certain Project Participants (EUD)

**MEETING DATE:** May 21, 2008

**PREPARED BY:** Electric Utility Director

**RECOMMENDED ACTION:** Adopt a resolution authorizing the City Manager to execute an amendment to the Seattle City Light Third Phase Agreement related to the Transfer of Rights by certain project participants.

**BACKGROUND INFORMATION:** The Seattle City Light (SCL) Third Phase Agreement, which provides for a seasonal exchange of energy between project participants and Seattle City Light, was executed on October 6, 1992. Under the Agreement, Project Participants, including Lodi, have the right to make transfers, sales, assignments and exchanges of Project capacity, energy and rights thereto.

The Agreement further provides that before the Northern California Power Agency (NCPA) may transfer an excess Project share to any entity other than a Participant; it shall give all Participants the right to purchase the share on the same terms and conditions. The Agreement finally provides that before NCPA may transfer an excess Project share to any person or entity other than an NCPA Member; it shall give all NCPA Members the right to purchase the share on the same terms and conditions.

On December 13, 2007, in accordance with the terms of the SCL Third Phase Agreement, Roseville and Palo Alto offered to transfer their surplus rights to SCL entitlement to remaining project participants and/or NCPA members under the terms prevailing in the SCL Agreement. On January 10, 2008, Healdsburg also asked to transfer its interest in rights to SCL entitlement.

Santa Clara has expressed an interest in acquiring the rights to all of the SCL capacity and energy being offered by Roseville, Palo Alto and Healdsburg. No other Project Participants or NCPA members expressed an interest in the offer. In response to Santa Clara's interest in assuming the transfer, Roseville, Palo Alto and Healdsburg asked NCPA to assist with the contract work necessary to effectuate the transfer of surplus Project capacity and energy from the above identified Project Participants to Santa Clara.

At the January 2008 NCPA Commission Meeting the NCPA Commission found that Roseville, Palo Alto and Healdsburg have met their obligation to offer their rights to surplus Project capacity and energy under the SCL Third Phase Agreement to other Project Participants or NCPA members, as required, and that Santa Clara is the sole NCPA Member or Project Participant that has an interest in obtaining the surplus Project capacity and energy rights being offered for transfer.

At the same time the NCPA Commission directed NCPA Staff to assist Project Participants Healdsburg, Palo Alto and Roseville in transferring their surplus Project capacity and energy rights to Santa Clara by preparing the necessary modifications to the SCL Third Phase Agreement and securing NCPA Commission and Participant governing board approvals of the modified Agreement.

APPROVED: \_\_\_\_\_  
Blair King, City Manager

NCPA's General Counsel prepared the AGREEMENT FOR ASSIGNMENT OF RIGHTS RELATING TO AND AMENDING SEATTLE CITY LIGHT CAPACITY AND ENERGY THIRD PHASE AGREEMENT, which is attached as Exhibit A. This Agreement amends the 1992 Third Phase Agreement and affects the transfer of capacity and energy rights between the affected Project Participants, and also adds Santa Clara as a Project Participant. At its April 2008 meeting, NCPA Commission approved execution of the SCL Amendment by NCPA.

NCPA's cost of facilitating this transfer will be allocated to only the NCPA Members involved in the transaction.

Although Lodi is not involved directly in this transfer of SCL entitlement, as an original signatory to the SCL Third Phase Agreement Lodi's approval is required to amend the SCL Third Phase Agreement and facilitate this transfer. None of the costs to facilitate this transfer will be charged to Lodi.

**FISCAL IMPACT:**       None

**FUNDING:**            Not Applicable.

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George F. Morrow  
Electric Utility Director

Attachment

**AGREEMENT FOR ASSIGNMENT OF RIGHTS RELATING  
TO AND AMENDING  
SEATTLE CITY LIGHT CAPACITY AND THIRD PHASE  
AGREEMENT**

This Agreement for Assignment of Rights Relating to and Amending Seattle City Light Capacity and Third Phase Agreement "Agreement" between certain Project Participants of the Seattle City Light ("SCL") Capacity and Energy Exchange Third Phase Agreement ("SCL Agreement"), and amending said SCL Agreement, dated as of May 31, 2008 (the "Effective Date"), is by and among the Northern California Power Agency, a joint powers agency of the State of California ("NCPA"), and the Cities of Healdsburg, Lodi, Roseville, Palo Alto and Ukiah (all of whom, are jointly referred to as "the SCL Project Participants"), and the City of Santa Clara doing business as Silicon Valley Power ("SVP"), who is currently not a SCL Third Phase Project Participant, (all of whom are jointly referred to as "the Parties")

WITNESSETH:

WHEREAS, NCPA and the Project Participants have previously executed that certain Agreement called Seattle City Light Capacity and Energy Exchange Third Phase Agreement dated October 6, 1992 (the "SCL Agreement"); and

WHEREAS, pursuant to the SCL Agreement, each of the SCL Project Participants owns participation percentages and megawatts of Firm Capacity and Associated Energy, which is specified in the SCL Third Phase Agreement; and

WHEREAS, Section 8 of the SCL Agreement provides for the transfer of rights therein by SCL Project Participants to NCPA members who are not Project Participants and provides that those NCPA members have a right to purchase said rights from the Project Participants on the same terms and conditions set forth in the SCL Agreement; and

WHEREAS, pursuant to Section 8 of the SCL Agreement, certain Project Participants, specifically, the Cities of Roseville, Palo Alto and Healdsburg desire to transfer their surplus project capacity to SVP, who is a NCPA member, but not a SCL Project Participant; and

WHEREAS, SVP is the sole NCPA member that has an interest in obtaining the surplus SCL Agreement Project capacity;

WHEREAS, NCPA's Capacity and Energy Exchange Agreement permits NCPA to transfer project participants rights between the Cities of Roseville, Palo Alto and Healdsburg to SVP;

WHEREAS, Section 15 of the SCL Agreement permits NCPA and the Project Participants to amend said agreement in writing executed by all parties;

WHEREAS, capitalized terms used in this Agreement and not expressly defined herein shall have the same meanings as such terms have in the SCL Agreement;

WHEREAS, on January 25, 2008, at a regularly schedule meeting of the NCPA Commission, SCL Agreement Project Participants reviewed and approved this transaction pending approval from Project Participants' governing boards; and

WHEREAS, on January 25, 2008, the NCPA Commission also directed the General Manager and General Counsel to prepare the necessary Agreement to effect this transfer and assignment by seeking Project Participants' governing boards approvals;

NOW, THEREFORE, the Parties agree as follows:

**Section 1. Purpose.** The purpose of this Agreement is to (a) amend the SCL Capacity and Exchange Third Phase Agreement to allow SVP to become a Project Participant; (b) enable certain SCL Project Participants, specifically, the Cities of Healdsburg, Palo Alto and Roseville, to transfer their rights to Project Capacity and Associated Energy and all benefits and burdens associated with the SCL Agreement to SVP; and (c) permit NCPA to effect the transfer of this surplus Project Capacity and energy related to the SCL Agreement and to reimburse NCPA for all reasonable costs incurred in effecting this transfer and assignment; and to (d) amend the SCL Agreement so that SVP becomes a Project Participants and agrees to be bound by the irrevocable assignment of the obligations and rights of the Cities of Roseville, Palo Alto and Healdsburg under the SCL Agreement.

**Section 2. Amendment to SCL Third Phase Agreement**

2.1 Pursuant to Section 15 of the SCL Agreement, the Project Participants and NCPA hereby amend and modify the SCL Agreement to add SVP as a Project Participant.

2.2 SVP agrees to be added as a Party to the SCL Agreement, and becomes a Project Participant of the SCL Agreement and expressly agrees to be bound to all terms, conditions, obligations, responsibilities and duties set forth in the SCL Agreement as of the Effective Date of this Agreement.

2.3 All Project Participants, including the Cities of Lodi and Ukiah, whose interests, rights and responsibilities pursuant to the SCL Agreement, remain unchanged, expressly consent to and agree to add SVP as Project Participant to the SCL Third Phase Agreement.

2.4 All other terms and conditions of the SCL Agreement that are not amended or modified herein remain unchanged and shall continue in force and effect.

**Section 3. Transfer of Surplus Capacity and Energy**

3.1 Pursuant to Section 8 of the SCL Agreement, as of May 31, 2008, the "Transfer Date," the Cities of Healdsburg, Palo Alto and Roseville shall transfer and assign their surplus Project Capacity and the Project Entitlement Percentages to SVP as set forth in Appendix A, which is attached to this Agreement and is incorporated herein. Such Project Capacity Associated Energy is hereby deemed as "surplus" by the Cities of Healdsburg, Palo Alto and Roseville, and shall be transferred to SVP for its beneficial use. NCPA and the Project Participants acknowledge and agree that Healdsburg, Palo Alto and Roseville's surplus Project Capacity and Energy interests shall be deemed to be transferred to SVP as of the Transfer Date, pursuant to Appendix A.

3.2 Said transfers and assignments shall be irrevocable and shall take effect on the Transfer Date. After the Transfer Date, the participation percentages of the Project Participants shall be adjusted on a going forwarded basis pursuant to Appendix A.

3.3 After the transfer and assignment of surplus Project Capacity and Project Entitlement percentages to SVP, the Cities of Healdsburg, Palo Alto and Roseville, shall have a remaining Project Entitlement Percentages as set forth in Appendix A. The participation percentages of the Cities of Lodi and Ukiah remain unchanged.

3.4 NCPA shall undertake all necessary actions to effect this transfer and assignment and will continue to perform the duties set forth in the SCL Agreement for all Project Participants, including SVP.

3.5 NCPA shall make all necessary adjustments to the budget and billing statements to all Parties pursuant to Section 6 of the SCL Agreement. A new monthly billing statement shall be sent to SVP, showing its share of costs and other charges payable pursuant to this Agreement, and any other credit or debit adjustments in accordance with the SCL Agreement.

3.6. The Parties recognize that NCPA will incur expense in administering this assignment. The Parties expressly agree to reimburse all costs and fees, including attorney's fees, incurred by NCPA in effecting this transfer and assignment of surplus Project Capacity and Project Entitlement percentages to SVP in an amount not to exceed \$10,000 in total.

**Section 4. Authority.** Each signatory to this Agreement represents and warrants that he/she has been duly authorized by the signatory's governing board for whom he/she executed it as demonstrated by a resolution from each signatory's governing board.

**Section 5. Counterparts.** This Agreement may be executed in any number of counterparts, all of which shall constitute a single instrument.

**Section 6. Notice.** Any notice, demand or request required or authorized by this Agreement to be given to any Party shall be in writing, and shall be personally delivered to the Party's representative on the NCPA Commission or transmitted to the Party at the address shown on the signature page hereof. The designation of such address may be changed at any time by written notice given to the Secretary of the NCPA Commission who shall thereupon give written notice of such change to each Party.

**Section 7. Waiver.** No waiver of the performance by a Party of any obligation under this Agreement with respect to any default or any other matter arising in connection with this Agreement shall be effective unless in writing.

**Section 8. Withdrawal by Project Participants.** No Project Participant, which term now includes SVP, may withdraw from this Agreement. However, NCPA will use its best efforts to assist any Participant that wishes to assign all or any portion of its rights pursuant to terms of the SCL Third Phase Agreement.

**Section 9. Counsel Representation.** Pursuant to the provisions of California Civil Code section 1717(a), each Party to this Agreement was represented by counsel in the negotiation and execution of this Agreement. In light of this representation, this Agreement shall not be construed as drafted by or be construed against any particular one of the Parties.

**Section 10. Dispute Resolution.** The Parties agree to make best efforts to settle all disputes related to this Agreement among themselves, and to meet and confer in good faith to that end. In the event that a dispute cannot be resolved by consultation and good faith meet and confer processes, the Parties agree that any such dispute shall be submitted to binding arbitration. The arbitration shall be governed by the Commercial Arbitration Rules of the American Arbitration Association from time to time in force. Costs and attorney's fees shall be recoverable by the prevailing party.

**Section 11. Amendments.** This Agreement may be amended only in writing.

**Section 12. Integrated Agreement.** This is an integrated agreement. It contains all of the understandings of the Parties.

**Section 13. Severability.** This Agreement is severable. In the event that any of the terms, covenants or conditions of this Agreement or the application of any such term, covenant or condition is held invalid as to any person or circumstance by any court having jurisdiction, all other terms, covenants or conditions of this Agreement and their application shall not be affected thereby, but shall remain in full force and effect unless the court holds that they are not severable from the other provisions of this Agreement.

**Section 14. Governing Law.** This Agreement shall be governed by the law of the State of California.


\* \* \*


IN WITNESS WHEREOF, each Party has executed this Agreement with the approval of its governing body.

NORTHERN CALIFORNIA  
POWER AGENCY

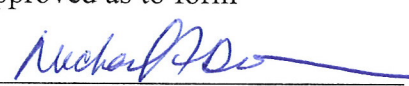
By 

Its: 

Attested by: 

  
Secretary

Approved as to form

  
General Counsel

CITY OF LODI

By \_\_\_\_\_

Its: \_\_\_\_\_

Attested by

\_\_\_\_\_  
City Clerk

CITY OF HEALDSBURG

By \_\_\_\_\_

Its: \_\_\_\_\_

Attest by: \_\_\_\_\_

\_\_\_\_\_  
City Clerk

Approved as to Form

\_\_\_\_\_  
City Attorney

CITY OF PALO ALTO

By \_\_\_\_\_

Its: \_\_\_\_\_

Attested by

\_\_\_\_\_  
City Clerk

Approved as to form

\_\_\_\_\_  
City Attorney

CITY OF ROSEVILLE

By \_\_\_\_\_

Its: \_\_\_\_\_

Attested by

\_\_\_\_\_  
City Clerk

Approved as to form

\_\_\_\_\_  
City Attorney

CITY OF UKIAH

By \_\_\_\_\_

Its: \_\_\_\_\_

Attest by

\_\_\_\_\_  
City Clerk

Approved as to Form

\_\_\_\_\_  
City Attorney

CITY OF SANTA CLARA

By \_\_\_\_\_

Its: \_\_\_\_\_

Attested by

\_\_\_\_\_  
City Clerk

Approved as to Form

\_\_\_\_\_  
City Attorney

Approved as to form

\_\_\_\_\_  
City Attorney

**APPENDIX A**

**AMENDED  
NCPA / SCL CAPACITY AND ENERGY EXCHANGE  
THIRD PHASE AGREEMENT**

**PARTICIPATION PERCENTAGES AND MEGAWATTS**

<b>Member</b>	<b>Percent</b>	<b>Megawatts</b>
Healdsburg	<b>0.000</b>	<b>0.0</b>
Lodi	<b>41.667</b>	<b>25.0</b>
Palo Alto	<b>0.00</b>	<b>0.0</b>
Roseville	<b>0.00</b>	<b>0.0</b>
Santa Clara (SVP)	<b>54.333</b>	<b>32.6</b>
Ukiah	<b>4.00</b>	<b>2.4</b>
Total	<b>100.00</b>	<b>60.0</b>

Percentages amended as of Effective Date of May 31, 2008

**A RESOLUTION OF THE COMMISSION  
OF THE NORTHERN CALIFORNIA POWER AGENCY  
AUTHORIZING ASSIGNMENT AND AMENDING SEATTLE CITY LIGHT  
CAPACITY AND ENERGY EXCHANGE THIRD PHASE AGREEMENT**

**WHEREAS**, the Northern California Power Agency ("NCPA") and the Cities of Healdsburg, Lodi, Palo Alto, Roseville and Ukiah ("Project Participants") have executed the Seattle City Light Capacity and Energy Exchange Third Phase Agreement ("SCL Agreement") on or about October 6, 1992, which is attached hereto as Exhibit 1;

**WHEREAS**, pursuant to the SCL Agreement, each of the SCL Project Participants owns participation percentages and megawatts of Firm Capacity and Associated Energy, which is specified in the SCL Third Phase Agreement attached as Exhibit 1; and

**WHEREAS**, Section 8 of the SCL Agreement provides for the transfer of rights therein by SCL Project Participants to NCPA members who are not Project Participants and provides that those NCPA members have a right to purchase said rights from the Project Participants on the same terms and conditions set forth in the SCL Agreement; and

**WHEREAS**, pursuant to Section 8 of the SCL Agreement, certain Project Participants, specifically, the Cities of Roseville, Palo Alto and Healdsburg desire to transfer their surplus project capacity to Silicon Valley Power, the municipal utility of the City of Santa Clara, who is a NCPA member, but not a SCL Project Participant; and

**WHEREAS**, SVP is the sole NCPA member that has an interest in obtaining the surplus SCL Agreement Project capacity;

**WHEREAS**, the SCL Agreement permits NCPA to transfer project participants rights between the Cities of Roseville, Palo Alto and Healdsburg to SVP;

**WHEREAS**, Section 15 of the SCL Agreement permits NCPA and the Project Participants to amend said agreement in writing executed by all parties;

**WHEREAS**, NCPA's General Counsel has prepared an Agreement for Assignment of Rights Relating to and Amending the Seattle City Light Capacity and Energy Exchange Third Phase Agreement, ("Amended Agreement") attached hereto as Exhibit 2, which has been reviewed by the Project Participants and SVP;

**NOW, THEREFORE, BE IT RESOLVED** by the Commission of the Northern California Power Agency as follows:

Section 1. The Commission hereby approves the Agreement for Assignment of Rights Relating to and Amending the Seattle City Light Capacity and Energy Exchange Third Phase Agreement, attached hereto and incorporated herein as Exhibit 2;

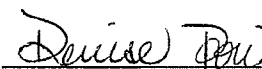
Section 2. The Commission hereby authorizes the General Manager to effect the necessary transfer of energy and capacity rights from the Cities of Healdsburg, Palo Alto and Roseville to SVP as set forth the Amended Agreement attached as Exhibit 2;

Section 3. The Commission grants NCPA authority to invoice either credits or charges to each Project Participant of the SCL Project as specified in as the Amended Agreement attached as Exhibit 2;

PASSED AND ADOPTED this 30<sup>th</sup> day of April, 2008 by the following vote on roll call:

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
Alameda	<u>Y</u>		
BART			<u>X</u>
Biggs			<u>X</u>
Gridley	<u>Y</u>		
Healdsburg	<u>Y</u>		
Lodi	<u>Y</u>		
Lompoc	<u>Y</u>		
Palo Alto	<u>Y</u>		
Port of Oakland		<u>X</u>	
Redding		<u>X</u>	
Roseville	<u>Y</u>		
Santa Clara	<u>Y</u>		
Truckee Donner			<u>X</u>
Turlock	<u>Y</u>		
Ukiah			<u>X</u>
Plumas-Sierra			<u>X</u>

  
PATRICK KOLSTAD  
Chairman

Attest:   
DENISE DOW  
Assistant Secretary

RESOLUTION NO. 2008-\_\_\_\_\_

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING THE CITY  
MANAGER TO EXECUTE AN AGREEMENT FOR THE ASSIGNMENT OF  
RIGHTS RELATED TO AND AMENDING THE SEATTLE CITY LIGHT  
CAPACITY AND ENERGY THIRD PHASE AGREEMENT

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WHEREAS, the City of Lodi and various other Northern California Power Agency ("NCPA") members are parties to the Seattle City Light Third Phase Agreement (SCL Agreement); and

WHEREAS, three of the signatories to the SCL Agreement (Roseville, Palo Alto and Healdsburg) have offered their rights in the SCL Agreement to other NCPA members; and

WHEREAS, the City of Santa Clara expressed interest in assuming the rights of such parties to the SCL Agreement and they were the only party to do so; and

WHEREAS, NCPA's General Counsel prepared an Agreement for the Assignment of Rights Related to and Amending the Seattle City Light Capacity and Energy Third Phase Agreement (SCL Amendment) to effectuate the transaction contemplated above;

WHEREAS, Lodi is not involved directly in the transfer of SCL rights but, as an original signatory to the SCL Agreement is required to sign the SCL Amendment;

WHEREAS, there is no cost to Lodi related to the proposed transaction and the SCL Amendment; and

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council hereby approves the Agreement for the Assignment of Rights Related to and Amending the Seattle City Light Capacity and Energy Third Phase Agreement (SCL Amendment), authorizes the City Manager or his designee to execute the SCL Amendment and empowers the Electric Utility Director or his designee to administer the SCL Amendment in accordance with its terms.

Dated: May 21, 2008

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I hereby certify that Resolution No. 2008-\_\_\_\_\_ was passed and adopted by the Lodi City Council of the City of Lodi in a regular meeting held May 21, 2008, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL  
City Clerk

2008 - \_\_\_\_\_